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March 27, 2000

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MAR 27 2000

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

VIA HAND DELIVERY

Magalie Roman Salas, Esq.
Office of the Secretary
Federal Communications Commission
The Portals, TW-A325
445 12th Street, S.W.
Washington, DC 20554

Re: Comments of Capitol Broadcasting Company, Inc.
In the Matter of
Public Interest Obligations of TV Broadcast Licensees
(MM Docket No. 99-360)

Dear Ms. Salas:

Transmitted herewith, on behalf of Capitol Broadcasting Company, Inc. ("Capitol"), are an original and four (4) copies of its Comments in the above-referenced proceeding. A diskette copy of Capitol's Comments is being simultaneously submitted under separate cover to Wanda Hardy, Paralegal Specialist, of the Mass Media Bureau and to the Commission's copy contractor, International Transcription Service.

An extra copy of the filing is enclosed. Please date-stamp the extra copy and return it to the courier for return to me.

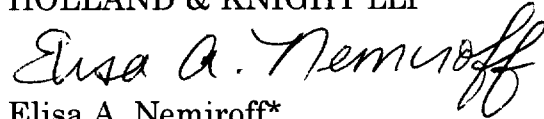
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Magalie Roman Salas, Esq.
March 27, 2000
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If you have any questions please contact the undersigned.

Very truly yours,

HOLLAND & KNIGHT LLP

A handwritten signature in cursive script, reading "Elisa A. Nemiroff". The signature is written in black ink and is positioned above the printed name.

Elisa A. Nemiroff*

Counsel for Capitol Broadcasting
Company, Inc.

Enclosure

*Admitted to the Maryland Bar; working under the supervision of Marvin Rosenberg, a member of the D.C. Bar.

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:)
)
Public Interest Obligations) MM Docket No. 99-360
of TV Broadcast Licensees)

COMMENTS OF
CAPITOL BROADCASTING COMPANY, INC.

CAPITOL BROADCASTING COMPANY,
INC.

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Its Counsel

*Admitted in Maryland; Supervision by Marvin Rosenberg, a
Member of the D.C. Bar.

March 27, 2000

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:)	
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Public Interest Obligations)	MM Docket No. 99-360
of TV Broadcast Licensees)	

COMMENTS OF
CAPITOL BROADCASTING COMPANY, INC.

On December 20, 1999, the Federal Communications Commission ("Commission") released a Notice of Inquiry ("Notice") seeking comments on the implementation of public interest obligations for digital television ("DTV") broadcasters. Pursuant to Section 336(d) of the Communications Act of 1934, as amended (the "Act"), 47 U.S.C. § 336(d), DTV broadcasters, as licensees of advanced television services, have the obligation to serve the "public interest, convenience, and necessity." Capitol Broadcasting Company, Inc. ("Capitol"), by its counsel, hereby submits its comments in response to this Notice.

I. INTRODUCTION.

1. Capitol is a diversified communications company that was founded in 1937. Capitol owns and operates television stations and is committed to providing the best service to its communities of license by

operating in the public interest.¹ Under an experimental license issued by the Commission, Capitol has been broadcasting a digital signal over WRAL-HD, for more than three and one-half years. During that period of time, Capitol has demonstrated the versatility of DTV by transmitting multiple channels in high definition and standard definition and providing datacasting services. Based on this experience, Capitol recognizes that, as the television industry transitions from analog to DTV technology, DTV broadcasters will have greater flexibility to air programming and provide related services.

2. Capitol understands that, while DTV technology will afford broadcasters valuable commercial opportunities, broadcasters will continue to have a responsibility to serve the “public interest, convenience, and necessity.”² 47 U.S.C. § 336(d) For this reason, Capitol submits that DTV broadcasters would benefit from specifically enumerated minimum public interest standards because they will provide DTV broadcasters with a better understanding of what it actually means to serve the “public interest, convenience, and necessity.” 47 U.S.C. § 336(d). Furthermore, minimum

¹ Capitol is the licensee of WRAL-TV, Raleigh, North Carolina, WJZY-TV, Belmont, North Carolina, and WFVT (TV), Rock Hill, South Carolina. WRAL-TV is currently operating WRAZ (TV), Raleigh, North Carolina, pursuant to a local marketing agreement. Capitol also operates experimental digital station WRAL-HD and recently signed on WRAL digital channel 53, the channel allocated by the Commission.

² James F. Goodman is the President and CEO of Capitol and served as a member of the Advisory Committee on Public Interest Obligations of Digital Broadcasters (“Advisory Committee”). Mr. Goodman was the chairman of the Working Group on Minimum Public Interest Standards and in this capacity contributed to the Final Report of the Advisory Committee that was presented to Vice President Al Gore on December 18, 1998.

public interest standards will provide DTV broadcasters with definite criteria by which to operate their stations to meet the needs of their service areas.

3. In the Notice, the Commission seeks comments on the following issues: a) challenges unique to the digital era; b) responding to the community; c) enhancing access to the media; and d) enhancing political discourse. In its request for comments, the Commission also seeks the public's opinion on suggestions and comments raised by People for Better TV (PBTv) and the President's Advisory Committee on the Public Interest Obligations of Digital Television Broadcasters ("Advisory Committee"). Capitol has responded to many of the issues raised by the Commission, as well as several of the comments presented by PBTv and the Advisory Committee.

4. In short, Capitol believes that the Commission should require a digital station, whether broadcasting a single high definition channel or multiple channels, to meet minimum public interest obligations on any and all channels. Capitol asserts that digital broadcasters will be more responsive to the community by inviting public input, listing public interest programming on a quarterly basis, providing public service announcements, and devoting time to public affairs programming that addresses local issues and needs. In addition, Capitol believes that all public service announcements, public affairs programming, and political programming should be closed captioned in order to afford individuals with disabilities

greater access to the media. Capitol also believes that free political programming should be offered prior to key political races and presents two proposals to effectuate this objective. Capitol proposes to replace the “lowest unit charge” system with a “bonus rate” plan to govern political advertising and to require the disclosure of purchasers of “issue advertising.” Capitol also submits that cable and satellite systems should be required to carry the full bandwidth of DTV stations. Finally, Capitol recommends that a voluntary code of conduct should be adopted by national broadcast organizations.

II. THE COMMISSION SHOULD REQUIRE A DIGITAL STATION TO MEET MINIMUM PUBLIC INTEREST REQUIREMENTS ON ANY AND ALL BROADCAST CHANNELS.

5. DTV is an advanced television service that must operate in the “public interest, convenience, and necessity.” 47 U.S.C. §336(d). DTV broadcasters have the ability either to “‘multicast’, to provide HDTV, or to ‘multiplex’ DTV programming and ‘ancillary and supplementary services’ at the same time.” Notice at ¶ 10. In light of the DTV broadcaster’s flexible programming ability, the Commission raises the question of whether the statutory public interest obligation should attach to the entire DTV spectrum or whether the licensee has the discretion to fulfill its public interest obligation through one or more of its program streams. Notice at ¶ 11.

6. Capitol acknowledges that Section 336(d) of the Act, 47 U.S.C. § 336(d), states that “[a] television licensee shall establish that all of its program services on the existing or advanced television spectrum are in the

public interest.” Capitol believes that if a DTV station chooses to multicast, the public interest obligation should attach to each channel. Imposing the public interest requirement on all of a multicasting station’s channels is consistent with the Commission’s expectation that a broadcaster’s fundamental use of a DTV license will be for the provision of free over-the-air television service. *See In the Matter of Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service*, Fifth Report and Order, MM Docket No. 87-268 (released April 21, 1997) (“5th Report & Order”) at ¶ 28.

7. Capitol submits that if a station chooses to multicast on one or more subchannels during a portion of the week, then the multicasting DTV broadcaster should only have to fulfill its statutory public interest obligation on that proportionate level. For instance, if a DTV broadcaster multicasts for 25 percent of the week on a subchannel, that broadcaster should only have to comply with 25 percent of the mandated public interest obligations on that channel. In any case, the Commission should not allow a DTV broadcaster to pay a fee to avoid complying with any public interest obligation that may be imposed.

III. DTV BROADCASTERS SHOULD BE RESPONSIVE TO THE COMMUNITY BY INVITING PUBLIC INPUT AND DISCLOSING PUBLIC INTEREST PROGRAMMING ON A QUARTERLY BASIS.

8. Capitol agrees with PBTv that DTV broadcasters should ascertain community needs and interests by inviting public input via postal and electronic mail services. Capitol suggests that the request for public

input should be supported with closed captioning. Capitol also agrees with PBTv that DTV broadcasters should on a quarterly basis report to both the Commission and the public the public interest programming developed in light of their ascertainment efforts. These reports should include information on public service announcements ("PSAs"), public affairs programming, news programs, children's programs, and ascertainment, and should be broadcast by the station and provided through an on-line Internet service.

9. Capitol agrees with the Advisory Committee that an effective means of disclosing a station's public interest programming is through the use of a standardized checklist form that can be placed in the station's public file. In addition to the items noted above that should be reported on a quarterly basis, Capitol suggests that the standardized checklist form also include contributions to political/civil discourse, local programming, programming targeting underserved communities, community service, and the existence of local marketing agreements. The checklist form, in addition to other public file documents, should be made available to the public by mail or through an on-line service.

IV. THE COMMISSION SHOULD ADOPT MANDATORY MINIMUM PUBLIC INTEREST REQUIREMENTS TO BE PHASED IN OVER SEVERAL YEARS, SUCH AS PROVIDING PUBLIC SERVICE ANNOUNCEMENTS AND DEVOTING TIME TO PUBLIC AFFAIRS PROGRAMMING THAT HIGHLIGHTS LOCAL ISSUES AND NEEDS.

10. Capitol supports the Advisory Committee's recommendation that the Commission adopt a set of mandatory minimum public interest

requirements to be phased in over a period of several years. Capitol suggests that in establishing these public interest requirements the Commission should adopt the following proposals regarding PSAs and public affairs programming.

11. Capitol suggests that the Commission require DTV broadcasters to air between 110 to 150 PSAs per week, phased in over the course of three years with one-third of the number of PSAs to be aired in the first year of DTV transmission, an additional one-third in the second year, and the total number of PSAs to be aired in the third year. These PSAs would be aired pursuant to the following schedule: 1) 40 to 60 PSAs should air between 6:00 a.m. and 4:00 p.m.; 2) 30 to 40 PSAs should air between 4:00 p.m. and 11:30 p.m.; and 3) 40 to 50 PSAs should air between 11:30 p.m. and 6:00 a.m. Capitol further suggests that at least one half of these PSAs should be locally produced and address local issues.

12. Capitol recommends that each DTV broadcast station should also be required to devote air-time to public affairs programming that highlights local issues and needs. The Commission should require DTV broadcasters to air at least two hours of local programming each week, which should be phased in over three years. Capitol suggests the following phase-in period: 1) during the first year of DTV transmission, DTV broadcasters should air one-half hour of locally produced public affairs programming each week; 2) in the second year, one hour or two half hours of such programming

should be aired each week; and 3) in the third year, two hours of such programming should be aired each week. Furthermore, it is Capitol's opinion that the first one-half hour of programming should be carried between 6:00 p.m. and midnight and in year two and after, one-half of all public affairs programming should air between 6:00 p.m. and midnight and be locally produced programming that emphasizes community needs and interests. Capitol strongly supports the airing of locally produced public affairs programming.

V. DIGITAL BROADCASTERS SHOULD PROVIDE CLOSED CAPTIONING FOR PUBLIC SERVICE ANNOUNCEMENTS, PUBLIC AFFAIRS PROGRAMMING, AND POLITICAL PROGRAMMING IN ORDER TO AFFORD INDIVIDUALS WITH DISABILITIES GREATER ACCESS TO THE MEDIA.

13. Pursuant to Section 713(b) of the Act, 47 U.S.C. § 713(b), Congress stated that broadcasters must make video programming accessible through the provision of closed captioning. The provision of closed captioning provides individuals with disabilities greater access to the media. The Commission previously declared that 95 percent of all new, non-exempt programming must be provided in a closed captioned format by January 1, 2006 and that 75 percent of all "pre-rule" programming must be closed-captioned by January 1, 2008. *In the Matter of Closed Captioning and Video Description of Video Programming, Implementation of Section 305 of the Telecommunications Act of 1996, Video Programming Accessibility, Report and Order*, MM Docket No. 95-176 (released August 22, 1997) ("Report & Order").

14. The Commission established a schedule for analog broadcasters to follow for the phasing-in of closed captioning services. *See* 47 C.F.R. § 79.1(b). Section 79.1(b) of the Commission's rules outlines the number of hours of closed captioned video programming that an analog broadcaster should provide each year beginning on January 1, 2000.

15. Capitol believes that the Commission should also require DTV broadcasters to afford individuals with disabilities enhanced access to the media through the use of closed captioning. Capitol agrees with PBTv that DTV broadcasters should provide closed captioning for all PSAs, public affairs programming, and political programming and that this service should be phased in over the first four years of a station's digital transmission.

16. Instead of the specific hourly requirements outlined in Section 79.1(b) of the Commission's rules, Capitol recommends that the Commission require DTV stations to provide one-fourth of its PSAs, public affairs programming, and political programming in closed captioning by the end of the first year of its DTV transmission, and increase the amount of its closed captioning services by one-fourth over each subsequent year. Capitol believes that because most broadcasters will begin DTV transmissions in 2002, this schedule will enable broadcasters to meet Commission guidelines that require programming to be closed captioned by 2006.

VI. FREE POLITICAL PROGRAMMING SHOULD BE OFFERED PRIOR TO KEY POLITICAL RACES.

17. Capitol believes that as part of its public interest obligation, DTV broadcasters should provide free political programming prior to key political races. Capitol recommends that the Commission adopt specific political programming guidelines for DTV broadcasters. Furthermore, Capitol advises the Commission that these guidelines should be effectuated upon adoption by the Commission.

18. Capitol offers the Commission two proposals for political programming guidelines to be followed by DTV broadcasters. The first proposal is similar to the method recommended by the Advisory Committee and discussed in the Notice. Capitol suggests that the Commission require DTV broadcasters to provide at least five minutes of free political programming each evening for the thirty nights preceding a primary or general election of candidate-centered races. These five minute programs should be broadcast between 6:00 p.m. and 11:30 p.m. If the Commission decides that five minutes is too long, then in no case should the programs be less than two minutes in length.

19. Alternatively, Capitol recommends that DTV broadcasters offer at least four hours of free political programming in the sixty days prior to primaries or general elections. One-half of this political programming should air between 6:00 p.m. and 11:30 p.m. Station management should have the discretion to decide how to allocate these four hours of time.

20. For either of Capitol's suggestions, interviews of candidates during regularly scheduled news programs should not count toward the required allocations of political broadcast time. Additionally, recognizing that large political races involve many candidates, Capitol advises that stations in the same market should be encouraged to collaborate in their provision of political programming by dividing the offices and candidates among themselves in order to guarantee that the public is exposed to as many candidates as possible.

VII. THE "LOWEST UNIT CHARGE" SYSTEM SHOULD BE REPLACED WITH A "BONUS RATE" PLAN TO GOVERN POLITICAL ADVERTISING AND PURCHASERS OF "ISSUE ADVERTISING" SHOULD BE DISCLOSED.

21. Capitol believes that implementation of the current "lowest unit charge" system set forth in Section 73.1942 of the Commission's rules, 47 C.F.R. § 73.1942, that governs the sale of political advertising, is very complex and confusing. Capitol suggests the replacement of the current system with a "bonus rate" plan, which would be included as part of a DTV broadcaster's public interest obligations.

22. Under Capitol's "bonus rate" plan, for every three political spots that a candidate purchases, the candidate would receive one bonus political spot for free. The "bonus rate" plan would only apply to commercials in which the candidate appears and voices 75 percent of the total commercial spot.

23. Capitol also notes that prior to elections, organizations often purchase advertising spots that may be classified as “issue advertising” as opposed to political advertising. Capitol is referring to those advertisements that are not purchased by candidates, but that are purchased by other groups and organizations with names that do not reveal the actual participation of the sponsors, such as “Citizens for Good Government,” and which include the name or likeness of a candidate for office in their messages.

24. Capitol believes that the Commission should require broadcasters, as part of its public interest obligation, and in addition to the political file requirements set forth in Section 73.1943 of the Commission’s rules, 47 C.F.R. § 73.1943, to broadcast information regarding the sponsors and officers of the organizations that fund issue advertisements within sixty days of an election. Broadcasting the information prior to an election, in addition to maintaining it in a station’s political file, will ensure that the public will be able to identify the people that are actually promoting these issue advertisements. Further, Capitol believes those organizations that purchase issue advertising should not be permitted to use the names of political candidates or parties during the 60 days preceding a primary or general election.

VIII. CABLE AND SATELLITE SYSTEMS SHOULD BE REQUIRED TO CARRY THE FULL BANDWIDTH OF DTV STATIONS.

25. To ensure that public interest programming is made available to the local community, “must carry” requirements by cable and satellite

systems are critical. Since almost 70 percent of homes receive their television programming by cable, and a growing number by satellite, these operators must be required to carry the new DTV signals. Capitol suggests that a reasonable plan to phase in this “must carry” requirement would ease the burden for cable and satellite operators, and at the same time, protect the public interest. As an example, broadcasters should be required to notify cable and satellite operators of their intentions to begin DTV broadcasts. Cable and satellite operators should then be given an 18-month time period after which they must begin carrying the DTV signal. Additionally, since public interest programming could occur in different format schemes, cable and satellite operators should be required to carry the full, unaltered bandwidth offered by the broadcast stations.

IX. A VOLUNTARY CODE OF CONDUCT SHOULD BE ADOPTED BY NATIONAL BROADCAST ORGANIZATIONS.

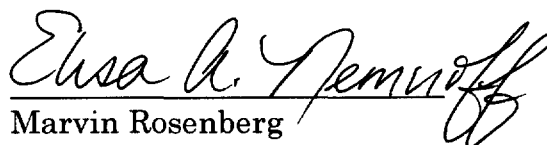
26. In its Notice, the Commission stated that it is not seeking comment on the Advisory Committee’s recommendation that the National Association of Broadcasters (“NAB”) prepare an updated code of conduct for digital broadcasters. Notice at ¶ 6, n. 26. However, Capitol strongly recommends that the Commission work with broadcasters, and if necessary Congress, to adopt a voluntary code of conduct that will meet anti-trust standards similar to the previous NAB Code. The NAB and cable and satellite associations should serve as agencies to coordinate and develop the codes.

X. CONCLUSION.

27. For all these reasons, the Commission should adopt minimum public interest obligations for DTV broadcasters. DTV broadcasters are required to serve the public interest and need specific guidelines to refer to in order to fulfill this statutory mandate.

Respectfully submitted,

CAPITOL BROADCASTING
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Dated: March 27, 2000